The Corporation Journal

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SPECIAL NOTICE.

THE ANNUAL RETURN OF NET INCOME required by the Federal Income Tax Law must be filed by all corporations on or before March 1, unless the corporation has obtained permission to file a return for its fiscal year. An extension of time for filing this return, not exceeding thirty days, may be obtained in case of absence or sickness of an officer required to verify the return, but application for such extension should be made to the Collector prior to the expiration of the period for which the extension is desired. Corporations doing business in foreign countries and for that reason unable to assemble their data in time to make the return of annual net income before March 1, may, upon a showing of this fact, file a tentative return in which there should be approximated, as nearly as possible, the actual business transacted during the year. A true and accurate return should be substituted for the tentative return as soon as the necessary data to make such true and accurate return shall be available.

Two forms are provided for making this return by corporations; form 1030, for the use of insurance companies; and form 1031, for the use of other corporations. Copies of these forms may be obtained from any Collector of Internal Revenue.

Returns should be filed with the Collector of the district in which the corporation has its principal place of business. The principal place of business of a corporation is the place or office in which are kept the books of account and other data from which the return is to be prepared. In the case of corporations whose books of account and other data are kept in foreign countries, the return should be made to the Collector of Internal Revenue of the district in which they have branch offices in this country, if they have such branch offices. Otherwise the return should be made to the Collector of the district in which the statutory office of the corporation is located.

The rulings, regulations and official explanation of the requirements of the law, as to making and filing these returns, are printed in full in The Corporation Trust Company's Income Tax Service. For further information regarding this Service, address our nearest office.

DOMESTIC CORPORATIONS.

ALABAMA.

INSOLVENT CORPORATION. The president of an insolvent corporation cannot, in good faith to it, sell its property and assets to himself. Bowdon Lime Works v. Moss, 70 So. 292.

COLORADO.

PERSONAL LIABILITY is not incurred by a corporate vice-president in securing an ouster of plaintiff from land, where he acted solely for the corporation and without malice. Wootton Land & Trust Co. v. John, 153 Pac. 686.

DELAWARE.

INCORPORATORS MAY ACT BY PROXY. Where three incorporators, being the only stockholders and persons interested, acquiesced in two of them acting by proxy at a meeting to organize the corporation, the meeting was valid and could not be impeached by them or any one else. Lippman v. Kehoe Stenograph Co., 95 Atl. 895.

WAIVER OF NOTICE. Sec. 138 of the General Corporation Law of Delaware provides that "whenever any notice whatever *is required to be given under the provisions of this Act*, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto." There is no provision in the Delaware law requiring notice of special meetings of directors; hence the general principles of law apply and a waiver of notice of such a meeting, signed after the meeting, is not effective. Lippman v. Kehoe Stenograph Co., 95 Atl. 895.

DIRECTORS MUST BE STOCKHOLDERS, but it is not necessary that they be stockholders at the time of election, so long as the qualifying shares be acquired before any action is taken as a director and within a time reasonable under all the circumstances. Lippman v. Kehoe Stenograph Co., 95 Atl. 895.

DIRECTORS' MEETINGS. Sec. 32 of the General Corporation Law provides that "The * * * directors may, however, hold their meetings * * * outside of this State, *if the by-laws so provide.*" But it is not necessary to have a by-law provision if the charter expressly provides that such meetings may be held outside of Delaware. Lippman v. Kehoe Stenograph Co., 95 Atl. 895.

GEORGIA.

STOCK SUBSCRIPTIONS cannot be avoided because other subscribers withdrew before the minimum stock subscription was reached, nor because power to conduct branches was included in the charter but omitted from the subscription agreement. When both preferred and common stock are provided, but the subscriber fails to designate to which class he subscribes, he will be deemed to have taken the common. National Bank of Union Point v. Amoss, 87 S. E. 406.

MAINE.

A MINORITY STOCKHOLDERS' ACTION for a receiver and corporate dissolution on grounds of gross mismanagement and imminent danger of insolvency is upheld by the Supreme Judicial Court of Maine in Murphy v. Utah Min. Mill. & Transp. Co., 95 Atl. 887.

THE CORPORATION LAWS OF MAINE contain many provisions that are considered advantageous to business corporations organized under them. One salient feature is the protection afforded shareholders who purchase stock from subscribers who have not fully paid for it. The Supreme Court of Maine has emphatically held that liability does not travel with corporate stock. So the holder of shares in a Maine corporation, if not an original subscriber, need have no fear of having to pay a corporate creditor because the corporation issued his stock for property at an overvaluation or even gratuitously.

The fee payable to the State Treasurer, at the time of incorporation, is based upon the authorized capital as follows:

$1,000 to $10,000, inclusive	$10.00
10,000 to 500,000, last inclusive	50.00
In excess of $500,000 for each $100,000	10.00

In addition the official charges are:

Attorney-General, for examination	$5.00
Register of Deeds, recording	5.00
Secretary of State, filing	5.00

The annual franchise tax assessed on or before the first day of July, in accordance with a return filed on June 1st, and payable on the first day of September in each year, is, like the organization tax, based upon the authorized capital of the corporation as follows:

$1,000 to $50,000, inclusive	$5.00
50,000 to 200,000, last inclusive	10.00
200,000 to 500,000, last inclusive	50.00
500,000 to 1,000,000, last inclusive	75.00
On each million dollars or part thereof in excess of $1,000,000	50.00

The attorney-general, upon application by any corporation, accompanied by a fee of $5 and satisfactory proof that it has ceased to transact business, will issue a certificate excusing the corporation from filing annual returns with the secretary of state until such time as it resumes business. This has the effect of relieving the company from the payment of a franchise tax until such time as it resumes business.

This excuse must be filed before July 1st of any year to obtain a remission of tax for that year.

The franchise tax is in addition to local taxes payable upon any property, real or personal, owned by the corporation in the state of Maine. If a corporation transacts all of its business outside the state of Maine and maintains merely a clerk's office within the state, there is no local tax.

The inheritance tax laws expressly exempt the stock owned by non-residents in such a corporation.

Corporations may be organized pursuant to the provisions of chapter 47 of the Revised Statutes of Maine, 1903, for any lawful purpose, except to conduct a banking or insurance business within or without the State of Maine, or a railroad, telegraph, telephone gas or electrical company to operate in the State of Maine. Railroad, gas, electrical, telegraph and telephone companies may be organized under the General Law if they are to operate entirely without the State of Maine. The liquor business is excluded as an unlawful purpose, because of the prohibition provision in the State Constitution.

A provision regulating preferred stock permits the creation of a class or classes of stock with such qualifications, privileges or restrictions as may be desired, and does not limit the fixed rate of dividends.

In the annual report no information regarding the financial affairs of the company or the business done is required.

There are no restrictions as to the holding of real and personal property, nor any limitation upon the amount of debt which may be created.

Maine corporations may hold stock of other corporations doing the same or a similar business and may guarantee obligations of other corporations in which they are interested.

Directors need not be residents of Maine and directors' meetings may be held outside the state. Stockholders' meetings must be held at the principal office of the corporation in Maine.

Books of account and all books of the corporation, except the stock and record books, may be kept free from inspection by stockholders and creditors.

Railroad, telegraph and telephone, and canal powers, and the right of eminent domain can be obtained to be exercised outside the state.

Offices may be maintained and books of account may be kept without the state.

The procedure for incorporating in Maine is briefly as follows:

The first step is for the associates, *i. e.* the incorporators, to enter into Articles of Agreement. This is done at a meeting held in Maine. A Certificate of Organization is then signed and sworn to by the president, treasurer and a majority of the directors of the corporation. This must also be done in the state of Maine, the oath being taken before a Justice of the Peace or Notary Public.

The Certificate of Organization, after being approved by the Attorney-General, is recorded by the Register of Deeds of the County in which the corporation's principal office is located. A copy certified by the Register is filed with the Secretary of State, who endorses the date of filing on the original, and returns it to the corporation.

As soon as the certificate of organization is filed in the office of the Secretary of State, the first annual meeting of the corporation is held at which directors are elected. The directors may then meet, at such time and place as they desire, to complete the organization of the company.

A copy of the Corporation Act of Maine and forms for use in incorporating may be obtained by Members of the Bar at any one of our offices.

MARYLAND.

RIGHTS OF MINORITY STOCKHOLDERS. Salaries voted to themselves by those in control of the Sherwood Distilling Company were ordered to be reduced at the instance of a minority stockholder in Heublein v. Wight, 227 Fed. 667. One point raised by the defendants was that the alleged excessive salaries had been paid for a number of years, to the knowledge of the complaining stockholder without his asking legal redress, and that it was now too late for him to complain. The Court observed that this contention was one of first impression, so far as cases cited on either side were concerned, that though it might be of weight under some circumstances, it would not debar relief in the case at hand, because the corporation was not as prosperous now as when the salaries were established. Moreover, there was no attempt in this suit to recover the back salaries. Its object was merely to fix the amount of future payments.

MICHIGAN.

THE "BLUE SKY LAW" OF 1915 has been declared unconstitutional by the United States District Court, Eastern District of Michigan, in Halsey & Co., et al v. Merrick et al, (not yet officially reported). This law was enacted as a substitute for the "Blue Sky Law" of 1913, which had been held to be invalid by the same court. The 1915 Legislature did not succeed in correcting the act so as to make it conformable to constitutional limitations. It still "impresses upon interstate commerce a burden which is direct and which is beyond the limits of the police power."

MISSOURI.

THE ORGANIZATION TAX is measurable by the valuation of property described in the articles of agreement and not by the amount of authorized capital. The Secretary of State will not be compelled to issue articles of incorporation where the capital stock is named as $50,000, but the aggregate valuation of property taken in payment therefor and described in the articles of agreement is $91,000. Incorporators cannot arbitrarily fix the amount of capital stock. The true value of the property should fix the basis of the capitalization of the company. State ex rel Leppert et al. v. Roach, 181 S. W. 90.

PROPER NOTICE OF A SPECIAL MEETING OF DIRECTORS WILL BE PRESUMED, where it appears from the record that a quorum was present at the meeting. Gate City Natl. Bank v. Elliott, 181 S. W. 25.

A CONTRACT MADE WITH INCORPORATORS to sell the stock of an insurance company is not binding upon the corporation, as the incorporators have no authority under the statute to employ agents for such a purpose. Taylor v. St. Louis Nat. Life Ins. Co., 181 S. W. 8.

NEBRASKA.

FORFEITURE OF CHARTER. After the charter of a corporation has been forfeited for non-payment of the annual license or occupation fee (Laws 1909, ch. 25) the corporation is without capacity to sue. Suit may be maintained, however, by the directors or managing officers at the time of forfeiture and a petition filed by the corporation may be amended by substituting the managing officers or directors as plaintiffs. Weekes Grain & Live Stock Co. v. Ware & Leland, 155 N. W. 233.

NEW YORK.

PROTECTION OF TRADE NAME. The German-American Button Company, a corporation, was granted injunctive relief against individuals and a certain other corporation using the name "German-American Hand Crochet Button Works." A corporate title is protected against infringement by an individual or copartnership as well as by another corporation. The fact that the name is a combination of geographical names does not deprive it of protection, nor is it necessary to show that anyone has yet been deceived by the similarity. The probability of confusion is the true test. German-American Button Co. v. A. Heymsfeld, Inc., et al., 156 N. Y. Supp. 223.

OKLAHOMA.

ULTRA VIRES may not be availed of by a corporation which has become surety upon a contractor's bond. Rounds & Porter Lumber Co. v. Thompson, 153 Pac. 648

UTAH.

LIABILITY FOR WRONGFUL FORFEITURE OF STOCK. A corporation is liable to restore stock and dividends thereon or to pay damages to a pledgor of its stock which it appropriated under the mistaken belief that it had the power to assess the stock in question and to forfeit it for the non-payment of the assessment. Wilson v. Colorado Mining Co., 227 Fed. 721.

VERMONT.

STOCK DIVIDENDS. Stock issued to a trustee as the result of a stock dividend should go to life tenants, where the profits from which the stock dividend was declared were accumulated during the life of the trust, according to the decision in In re Heaton's Estate, 96 Atl. 21. This is a case of first impression in Vermont on the question of apportionment of stock dividends. The opinion contains a valuable review of authorities from other states.

WISCONSIN.

TRADE NAMES AND TRADE MARKS. J. I. Case is a name long associated with plows and threshing machines. There are two distinct corporations both founded originally by J. I. Case and both located at Racine, Wisconsin. One is the J. I. Case Threshing Machine Company and the other, J. I. Case Plow Works. Mr. Case began the manufacture of threshing machines in 1842. In 1863 he formed a partnership under the name of J. I. Case & Co. and in 1880 this was incorporated as J. I. Case Threshing Machine Company. In 1876 Mr. Case with others not interested in the firm of J. I. Case & Co., organized the Case-Whiting Co., a corporation, for the purpose of making plows. In 1884 this corporation failed and the good-will was sold to Mr. Case. In 1885 he organized the J. I. Case Plow Works and conveyed to it the property of the former compnay, including its good-will. This company has continued since to manufacture plows known in the trade and among farmers as the "Case" or "J. I. Case" plows. Case owned practically all of the stock of this company and one-quarter of the stock of the Threshing Machine Company. He was president of both companies until his death in 1891. At or shortly before the death of Mr. Case his stock passed into other hands, but there was entire harmony between the two corporations for many years and neither sought to invade the field of the other.

In 1900 the Threshing Machine Company placed on exhibition a tractor engine and gang of plows on which appeared the name "Case" together with the Threshing Machine Company's name and trade mark. This plow was not successful and it was not until about 1912 that the Threshing Machine Company put out plows in any number under the trade name of "Case." Its principal product has always been threshing machines, but during the last twenty-five years it has added other lines of manufacture such as road machinery, traction engines and automobiles.

Since 1903 it has branded its machinery of all kinds with the word "Case" in large letters and has advertised it as "Case" machinery in trade journals.

In the meantime the Plow Works had continued its business of manufacturing plows. In 1912 it protested against the use of the word "Case" on plows manufactured or sold by the Threshing Machine Company. About the same time the Threshing Machine Company took preliminary steps to change its name to J. I. Case Company. The officers of the Plow Works learning of this action at once organized a new corporation called the J. I. Case Company, and the Threshing Machine Company thereupon abandoned the attempt to change its name. The incorporators of the new company were three grandsons of the original Jerome I. Case, one of whom bears the name of his grandfather. The company was formed to act as sales agent for the plow works but never did any business.

For many years there had been confusion in the delivery of mail to the two old corporations. Letters were frequently addressed to "Case & Co." or to "J. I. Case Company" or to "J. I. Case." Letters so imperfectly addressed were generally delivered to the Threshing Machine Company and if upon examination they appeared to be intended for the Plow Works they were immediately sent to the latter concern. This was a satisfactory method until the two corporations became business competitors in the manufacture and sale of plows, at which time friction began to appear. When the new corporation was formed it demanded of the postmaster at Racine that all mail directed to J. I. Case Company or J. I. Case Co. be delivered to it, but the post office department after a hearing directed that all mail so addressed without other designation of street number or address be delivered to the Threshing Machine Company.

The whole matter was finally taken to court and the Supreme Court of Wisconsin has just held that the Threshing Company may not use the word "Case" on plows or attachments for plows manufactured by both corporations and that it may place its name on such plows or attachments only when it also displays thereon in such way as to readily attract the attention of the ordinary observer the words "Not the original Case Plow" or the words "Not the Case Plow made by J. I. Case Plow Works," the word "Not" in either case to be in capitals. In its advertising and its catalogues the Threshing Machine Company must state in conspicuous type and style the words "Our plows are not the original Case Plows" or "Our plows are not the Case Plows made by the J. I. Case Plow Works," and it must not use in immediate connection with the printed matter relating to plows or plowing machinery the trade name "Case" or "J. I. Case." Certain positive instructions are also given for marking attachments made by the Threshing Machine Company which are capable of being sold with or without the plows.

Imperfectly addressed mail, the court holds, shall be opened by an officer of the Threshing Machine Company in the presence of a representative of the Plow Works who has the right to make note of any mail which he considers wrongly retained by the Threshing Machine Company, such disputed mail to be submitted to the court from time to time, if necessary.

The new company is enjoined on equitable grounds from acting as the sales agent of the Plow Works and the court casts doubt as to its right to the name assumed by it, since the Wisconsin statutes require that the name assumed by a corporation to be such as to distinguish it from any other domestic corporation. J. I. Case Plow Works v. J. I. Case Threshing Machine Co., 155 N. W. 128.

FOREIGN CORPORATIONS.

ALABAMA.

COMPLIANCE WITH THE FOREIGN CORPORATION LAW is sufficiently alleged in a bill which states that the complainant had "complied with all the laws of the state * * * with reference to foreign corporations * * * and was qualified to carry on its business in the state." Singleton v. United States Fidelity & Guaranty Co., 70 So. 169.

SERVICE OF A SUMMONS on the cashier of a state agency of a foreign corporation is good, although the corporation has filed a written designation of another person as the one authorized to receive process. Prayter v. Northern et al. 70 So. 156.

IDAHO.

SUIT TO QUIET TITLE is not prohibited by the foreign corporation statute, where such suit is brought by a foreign corporation which had qualified prior to the time that it acquired the land in question, but whose designated agent had subsequently removed from the state. The law applies only to actions brought to enforce contracts. Moreover, it appears that a new designation was made prior to the decision of the trial court. Junction Placer Mining Co. v. Reed, 153 Pac. 564.

MISSOURI.

RIGHT OF ACTION PERTAINING TO UNLICENSED POWERS. A South Dakota corporation, licensed "to do a general printing, publishing and bindery business" in Missouri is not entitled to sue in the Missouri State Courts for an alleged libel affecting its conduct of the unauthorized business of building, selling houses and conducting certain "associations." Lewis Pub. Co. v. Rural Pub. Co., 181 S. W. 93.

NEW YORK.

SERVICE OF PROCESS. A "general sales manager" in charge of an office in New York City for a Pennsylvania corporation is a "managing agent" within the

meaning of subdivision 3 of section 432 of the New York Code of Civil Procedure, providing for personal service of a summons upon corporations which have property within the state but which have designated no agent to accept service of process. Jackson v. Schuylkill Silk Mills, 92 N. Y. Misc. 442, 156 N. Y. Supp. 219.

PRINCE EDWARD ISLAND.

THE EXTRA PROVINCIAL COMPANIES ACT, 1913, requires every company not incorporated in Prince Edward Island, "before beginning business in the province," to file certain statements under oath with the provincial secretary. The act provides further that every company which fails to comply with the provisions thereof shall be liable to a penalty of $10 for every day of default and a similar penalty is imposed on the officers and employees doing business for such defaulting company. The act does not expressly declare contracts void if entered into before compliance with the statute has been made, but the Supreme Court of the Province holds that the effect of the statute is to make such contracts illegal and unenforceable. Willett Martin Co. v. Full, 24 D. L. R. 672.

SASKATCHEWAN.

SETTING UP AND STARTING THE WORKING OF MACHINERY sold by it does not constitute a carrying on of business by a foreign corporation within the meaning of the Foreign Companies Act of Saskatchewan, R. S. 1909, Ch. 73, if the company has no resident agent and no office or place of business in the Province. This case holds further that a Province cannot deny a Dominion Company the right to maintain actions in the Provincial Courts as a penalty for not first complying with local registration requirements. Linde Canadian Refrigerator Co. v. Sask. Creamery Co., 24 D. L. R. 703.

TENNESSEE.

A BOOKING AGENCY IS "DOING BUSINESS" in Tennessee, where it agreed to "engage and book" vaudeville acts to be performed within the State for a firm located therein, although it had no office in the state and the money for its services was forwarded to its office in Chicago. A suit by the agency against the operators of a Tennessee theatre was dismissed by the Supreme Court of Tennessee because it had not complied with the foreign corporation law by filing a copy of its charter with the Secretary of State (128 Tenn. 417). This decision has been affirmed by the Supreme Court of the United States in Interstate Amusement Company v. W. S. Albert, Fleth Catino, and Tennessee Realty and Leasing Co. (Case No. 69, October term, 1915—official citation not yet available). The Federal Court considers itself bound by the findings of fact by the State Court. These were, in effect, that the Interstate Amusement Company sent troupes of actors into Tennessee and agents to secure new contracts; and that it was "a middleman levying tribute from

the owners of the houses where amusement was afforded and from the actors whose talents were employed." The Court concedes that the evidence showing the "doing business" is meagre, but concludes that "there is evidence tending to show business transacted in the State, and it does not clearly appear to have been interstate business." A provision in the contract that the company was "acting solely in the capacity of agent of the theatre owner, and is not responsible for failure of artists to fulfill contracts," was disregarded because "the question is not so much—What was agreed to be done?—as—What was done?"

TAXATION.

PENNSYLVANIA.

CORPORATE TAXES due the Commonwealth are given priority of lien upon the franchises and property of corporations from the date such taxes are settled by the auditor general and approved by the State Treasurer. (Act June 15, 1911, P. L. 955). This priority was not allowed, however, in Second National Bank of Pittsburgh v. Glass, C. P., Armstrong County, September term, 1915, No. 4, not yet reported, where land was conveyed to a corporation subject to a mortgage. The corporation was indebted for State taxes and the land was sold by the mortgagee on judgment entered against the original mortgagor. In such cases the Court held that the land so sold was not property of the corporation to which the lien for taxes could attach within the meaning of the act.

SHARES OF STOCK OF REGISTERED FOREIGN CORPORATIONS owned by residents of the State of Pennsylvania are not taxable by way of personal property taxation for the proportion of capital stock of such foreign corporations invested in the State and upon which it may be paying a capital stock tax or which may be exempt from such tax by law. This was so held in Woolston et al v. Gratz Pleas,et al, 24. District Reports pg. 1065, where Bregy, P. J. of the Court of Common No. 1 of Philadelphia County found that capital stock of a foreign corporation paying a tax, or exempt therefrom by law, should not again be taxed in the hands of stockholders as to the proportion of the capital stock of such corporation invested in the State.

The logical effect of this decision is that residents of the State of Pennsylvania, and as such subject to the personal property tax of 4 mills, are required to return stock of foreign corporations held by them in their personal property return. They may claim exemption from such tax, however, for such portion of the value of such stock as the investment of the corporations in the State bears to the entire capital stock of the corporation.

CAPITAL STOCK TAX. The case of Commonwealth vs. Westinghouse Air-Brake Co. reported in the Corporation Journal, Vol. 2, page 10, was affirmed on appeal by the Commonwealth to the Supreme Court of Pennsylvania—251 Pa. 12, 95 Atl. 807.

CORPORATE LOAN TAX. The case of Commonwealth v. Wilkesbarre & Hazleton R. R. Co. reported in the Corporation Journal, Vol. 2, p. 22, has been reversed by the Supreme Court of Pennsylvania, 95 Atl. 915, which holds that the company was "doing business" in the State.

PRICE-FIXING.

VICTOR TALKING MACHINE CASE. When this case was before the District Court (see Corporation Journal, page 7) the Court held that, under the license notice and agreement, the Talking Machine Company, by receiving the entire royalty, parted with its interest in the property and could not object to a licensee disposing of the article at less than the fixed price. The United States Circuit Court of Appeals has reversed this holding. After reciting the license notice which appears on the various talking machines produced by the Victor Company, the higher court says: "A study of these various documents leads to the conclusion that complainant has undertaken to avoid making such a sale of its machine as would permanently pass it beyond any further control by itself. We think it has succeeded in so doing; this is not a sale outright, or a conditional or restricted sale or any sale at all. Under the authorities the owner of a patent who manufactures machines under such patent can give the right to use to whom he pleases upon what conditions he may choose to impose. * * * The documents are long and complicated but it seems to us that this is what they provide for. We do not know why under the law and the authorities a patentee may not thus dispose temporarily of the use and ultimately of the title of a machine made by him and protected by his patent." Victor Talking Machine Co. v. Strauss et al. (Not yet reported). Appeal will be taken to the Supreme Court.

TRUSTS AND MONOPOLIES

U. S. DISTRICT COURT.

THE UNITED SHOE MACHINERY COMPANY LEASES have been held to be illegal under the Clayton Act, on a motion for preliminary injunction in the District Court for the Eastern District of Missouri, at St. Louis. The Court held that the Clayton Act is applicable to a continuing contract of lease, although made before its passage. United States v. United Shoe Machinery Company, 227 Fed. 507.

U. S. SUPREME COURT.

STOCKHOLDERS' SUIT. A suit cannot be maintained in equity by a single stockholder of a corporation alleged to have been injured, and which refuses to sue, to recover threefold damages under the Sherman Act. The defendant is entitled to a jury trial in such an action, and this can only be afforded in a court of

law as distinguished from a court of equity. The Court suggests that the bill should be so framed so as to seek a decree "directing the corporation to sue, or if it fails to do so, permitting the plaintiff to sue in its name and on its behalf." Fleitmann v. The Welsbach Street Lighting Co. Cases Nos. 145 and 146, October Term, 1915. Official citation not yet available.

INCOME TAX.

THE INCOME TAX LAW IS CONSTITUTIONAL. The Supreme Court of the United States has decided the case of Brushaber v. Union Pacific Railroad Co., Case No. 140, October Term, 1915, decided January 24, 1916—not yet reported. See Corporation Journal, Vol. 2, p. 24 for other reference to this case.

The Court assumes jurisdiction under the rule in Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, on the ground that a suit by a stockholder to restrain a corporation under proper averments from voluntarily paying a tax charged to be unconstitutional does not violate the prohibitions of Section 3224 Revised Statutes against enjoining the enforcement of taxes.

In sustaining the law the Court reasons thus: The Constitution has always recognized the two great classes of taxes, direct and indirect. It lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes and the rule of uniformity as to duties, imposts and excises. The requirement of apportionment as to the one class and the requirement of uniformity as to the other are not a limitation upon the authority to tax, but simply regulations concerning the mode in which the plenary power is to be exerted. In the whole history of the Government down to the time of the adoption of the Sixteenth Amendment, no question has been anywhere made as to the correctness of these propositions. But there have been differences of opinion concerning the criteria to be applied in determining in which of the two great subdivisions, a tax would fall. The various acts taxing income derived from property of every kind and nature which were enacted during the Civil War period were classed under the head of excises, duties and imposts. This was not questioned until the Pollock case when the constitutional validity of the act of 1894 was challenged on the ground that the tax was direct in the constitutional sense. The court held in that case that in substance the tax did burden the property from which the income was derived, and was therefore a direct tax on property invalid for want of apportionment. The Pollock case did not in any degree involve holding that income taxes generally and necessarily came within the class of direct taxes, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such, unless and until in substance it became direct. The Sixteenth Amendment did not confer any power to levy income taxes—an authority already possessed and never questioned—nor did it limit and distinguish between one kind of income taxes and another. The whole purpose of the amendment was to relieve all income taxes when imposed from apportionment. Hence, since the amendment did not create any new power to tax, the several contentions that the

income tax law contains provisions and exemptions not authorized by the amendment are untenable. Neither does the amendment take the income tax out of the great class of indirect taxes and treat it as a direct tax relieved from apportionment. As an indirect tax it must be uniform, but such uniformity need be only geographical. The retroactive feature of the law is not objectionable because the period covered did not extend beyond the time the amendment was operative. The due process clause of the constitution is not a limit on the taxing power of Congress. None of the contentions presented convince the court that the act is so arbitrary as to constrain to the conclusion that it is not the exertion of taxation but a confiscation of property, that is, a taking of the same in violation of the Fifth Amendment, or so wanting in basis for classification as to produce such a gross and patent inequality as to lead inevitably to the same conclusion. Arguments as to the expediency of levying a tax or the economic mistake or wrong involved in its imposition are beyond judicial cognizance.

RULINGS AND REGULATIONS.

The most important development of the Income Tax Law during January was the U. S. Supreme Court decision summarized above. So important did we consider this to our subscribers that a full copy of the opinion was sent to every subscriber on the day after it was handed down. It appears on pages 337–347 of our 1916 Service book.

During the month we printed correspondence from the Treasury Department on the question whether any taxable income arises on the exchange of capital stock of a corporation for capital stock of a corporation resulting from a reorganization where the par value of the stock received is greater than that of the stock surrendered, (331) also a letter on the computation of depreciation of patents partially expired at the time of purchase (332).

In a mimeograph letter to collectors the Treasury Department discusses the question of bonuses and other special compensations and points out when such payments are deductible or not deductible as an expense by the paying corporation (333).

On the purchase and sale of bonds between interest dates no ownership certificate is required. When bonds are purchased between interest dates by the issuing corporation for cancellation no ownership certificates are required (334).

Corporations issuing stock without par value may deduct the amount of interest actually paid within the year on an amount of bonded or other indebtedness not in excess of the sum of one-half of its interest bearing indebtedness outstanding at the close of the year plus the entire amount of the paid-up capital stock—that is, the amount of capital paid in and represented by the shares issued (335).

An American citizen who has accruing to him from time to time income from foreign investments which is placed to his credit in foreign countries should report each item of income at the rate of exchange which prevailed on the date it was credited to his account (336).

(NOTE: The page references are to our Income Tax Service, 1916, in which these rulings are printed in full.)

WAR TAX.

RULINGS AND REGULATIONS.

The transfer of stock to a trustee as collateral security for a loan is not taxable (304).

A bond executed by a corporation for the payment of a specific sum of money is taxable at the rate of 5c. on each $100 of face value or fraction thereof (306).

A bond executed by a corporation for a penal amount and containing certain penal conditions is taxable at the rate of 50c., unless such bond is executed with a surety transacting the business of fidelity insurance, etc., in which case it is taxable at the rate of one-half of one per cent. on each dollar or fractional part thereof upon the amount of the premium charged (306).

Stock in a corporation is a valuable consideration for the transfer of real property. The tax should be computed on the value of the interest in the property conveyed as outlined in Treasury Decisions 2115 and 2123 (307).

A deed executed and delivered on or after December 1, 1914, conveying property in pursuance of a contract made prior to that time is taxable (308).

Since the War Tax has been extended an additional tax will be due upon the payment of a second premium on all continuing policies of insurance, bonds and other documents taxable under the fourteenth and fifteenth paragraphs of Schedule A.

Cancelled stamps covering the tax due should be forwarded by insurance companies to the holders of such continuing policies to be affixed to the policy or bond of indemnity, as the case may be (309).

Upon the retirement of preferred stock by a corporation the transaction is not taxable where the stockholder merely surrenders his certificate for cancellation or where the assignment on the back of a certificate has been executed as a matter of form (310).

Custom bonds executed by agents on behalf of corporate surety companies, under contract whereby the surety company agrees to be surety on all bonds in a designated amount for a certain premium executed by the agents for various principals, are properly taxable (311).

Deeds executed by a state, county, town or other municipal corporation are not taxable (313).

(NOTE: The page references above are to our War Tax Service, in which the rulings and regulations are printed in full. Some of the rulings are formal treasury decisions; others are contained in letters answering specific questions.)

FEDERAL RESERVE.

An important decision has been handed down by the Supreme Court of the State of Illinois, holding that Section 11 (K) granting the right to national banks to act as trustee, executor, etc., is unconstitutional (375).

Informal rulings have been made on the subjects of additional stock applications, certificates of eligibility on farm mortgage paper, purchase of United States bonds, expenses of banks, classification of cotton bills, responsibility on acceptances, election

of advisory council and tenure of office of officers and employees of Federal Reserve Banks (383–385).

The Law Department has published opinions on the subjects of dividends on surrendered stock and reduction of Federal Reserve districts (386–398).

The Federal Reserve Board has passed a series of resolutions providing that national bank examiners shall not hereafter be appointed to act as Federal Reserve or Deputy Federal Reserve Agents; that employes of Federal Reserve Banks should be subject to annual election or appointment (unless a shorter term is specified) and that the list thereof, with salaries, should be submitted to the Federal Reserve Board at the beginning of each year for its approval; that governors or other officers of the Federal Reserve Bank should not serve as members of the advisory council, and that an assessment of one-tenth of one per cent. of the total capital stock of Federal Reserve Banks be made to defray expenses of the Federal Reserve Board (399-401).

(NOTE: The page references are to our Federal Reserve Act Service, which reports in full all rulings, regulations and opinions of the Federal Reserve Board.)

TRADE COMMISSION.

No rulings or regulations have been issued by the Federal Trade Commission to date.

A series of conference rulings are expected in the near future.

NEW PUBLICATIONS.

THE NATIONAL TAX ASSOCIATION announces the publication of the ninth volume in its well-known series on Taxation. This volume contains the addresses and discussion at the official conference held in San Francisco, Cal., in September, 1915.

This conference was attended by official delegates appointed by the Executives of States and Canadian Provinces. Tax Officials, Economists and prominent business men from all parts of this country and Canada. The proceedings are well up to the standard set at previous conferences and this volume of approximately 500 pages. covers many troublesome phases of the subject of pressing importance at this time. Over twenty important papers are published, supplemented by a stenographic report of the general discussion and comment which took place at the convention, thus affording the reader the peculiar advantage of treatment of each topic from various angles, by persons with first hand and authentic information.

The report of the Committee on Federal Income Tax which recommends a number of important changes in the present law is of special timeliness since several of the ecommendations have been adopted as Administrative measures and the whole subject of amendment is now before Congress. The price of the volume is $3, postpaid. Orders may be made to T. S. Adams, Secretary, National Tax Association, Ithaca, N. Y., or A. E. Holcomb, Treasurer, 15 Dey Street, New York City.